

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

XL SPECIALTY INSURANCE COMPANY,

Plaintiff,

v.

SILVER BAY LOGGING, INC.,

Defendant.

CASE NO. C06-881RSM

ORDER ON REQUEST FOR
EXPENSES

SILVER BAY LOGGING, INC.,

Counterclaimant,

v.

XL SPECIALTY INSURANCE COMPANY,

Counterdefendant.

This matter is now before the Court for consideration of defendant/counterclaimant's request for attorneys' fees and expenses pursuant to F.R.Civ.Proc. 37(a)(4)(A). The Court has reviewed defendants' declaration (Dkt. # 32), plaintiff's opposition (Dkt. # 34), and the documents relating to the underlying motion to compel (Dkt ## 16, 22, 23, 25, 26, and 30). For the reasons below, the Court declines to order the payment of fees and expenses.

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When a motion to compel is granted, or if the disclosure is provided after the motion was filed, the Court shall, after affording an opportunity to be heard, require the opposing party or attorney, or both, to pay the reasonable expenses incurred in bringing the motion, unless the Court finds that the opposition to the motion was substantially justified, or other circumstances make an award of expenses unjust. F.R.Civ.Proc. 37(a)(4)(A). The Court finds that plaintiff's opposition to the motion to compel was substantially justified, in that reasonable minds could disagree on plaintiff's obligation to produce Mr. Kingston as a witness. Further, the fact that plaintiff was required to pay defendant's expenses in attending Mr. Kingston's deposition in Texas makes a further award of sanctions unjust.

Dated this 13th day of December, 2007.


RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE